160 U.S. 660

TRANSCRIPT OF RECORD.

160–660

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~794~~. 446

THE FIRST NATIONAL BANK OF GARNETT, KANSAS, PLAINTIFF IN ERROR,

vs.

R. H. AYERS, SHERIFF OF ANDERSON COUNTY, KANSAS; J. M. HARGRAVE, TREASURER OF ANDERSON COUNTY, KANSAS, AND THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY, KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED SEPTEMBER 10, 1894.

(15,678.)

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SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1894.

1 In the Supreme Court of the State of Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff in Error,
vs.
R. H. AYRES, Sheriff of Anderson County, Kansas; J. M. Hargrave, Treasurer of Anderson County, Kansas, and The Board of County Commissioners of Anderson County, Kansas, Defendants in Error. } No. 8274.

Be it remembered that on the 29th day of March, 1892, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in error, and attached to said petition in error and made a part thereof was the original case made of the proceedings of the court below; which said petition in error and case made are in words and figures as follows, to wit:

2 In the Supreme Court of the State of Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff in Error,
vs.
R. H. AYERS, Sheriff of Anderson County, Kansas; J. M. Hargrave, Treasurer of Anderson County, Kansas, and The Board of County Commissioners of Anderson County, Kansas, Defendants in Error. } 8274.

Petition in Error.

Comes now the plaintiff in error and complains of the defendants in error, and for cause states—

That heretofore, on the 23rd day of December, 1891, the plaintiff in error filed its petition against the defendants in error in the office of the clerk of the district court of Anderson county, Kansas; that on said day said defendants in error, by Manford Schoonover, their attorney, duly entered their appearance to said case, and that thereupon, on said day, the plaintiff in error and the defendants in error duly entered into an agreed statement of facts in said case, which was on said day duly filed in the office of the clerk of the district court of Anderson county, Kansas.

That on said day, by agreement of parties, said case came regularly on for trial and was heard by the court without the intervention of a jury by agreement of all parties concerned.

That the court, after having read the petition of the plaintiff in error and the agreed statement of facts filed in said case and after argument of counsel and upon due consideration, found generally for the defendants in error, and thereupon, on said day, rendered judgment against the plaintiff in error for the costs of said action, to which finding of the court and judgment rendered in said cause the plaintiff in error at the time duly objected and excepted; that thereupon, on said 23rd day of Dec., 1891, the plaintiff in error filed

its motion for a new trial; which motion was on said day and after due consideration by the court overruled; to which ruling of the court the plaintiff in error at the time duly excepted.

And thereupon the plaintiff in error prayed an appeal to this court, which was by the district court of Anderson county granted, and for good cause shown the plaintiff in error was given sixty days to make and serve a case made on the defendants in error for the supreme court.

That afterwards and on the 19th day of Feb., 1892, the plaintiff in error duly served upon the defendants in error a case made in said cause and that said case made was served within the time allowed by the court for making and serving a case made.

That afterwards and on the 21st day of March, 1892, said case made was duly presented to the Hon. A. W. Benson, judge of the district court of Anderson county, Kansas, and said case made was duly settled and allowed by said judge, and the same was on
3 said day properly attested by the clerk of the district court of said county and on said day filed in the office of said clerk; which said case made is filed herewith, made a part of this petition in error, and is marked Exhibit "A."

Plaintiff further states that there is a manifest error in the trial of said case which prejudiced this plaintiff in error; that said errors consist in—

First. The court erred in finding for the defendants in error upon the petition and agreed statement of facts; to which finding of the court the plaintiff in error at the time excepted.

Second. The judgment and finding of the court are contrary to law and are not sustained by sufficient evidence; to which judgment of the court the plaintiff in error at the time excepted.

Third. The court erred in overruling the plaintiff in error's motion for a new trial; to which the plaintiff in error at the time duly excepted.

Wherefore plaintiff in error prays the consideration of the court in the premises and demands judgment that said cause be reversed and that the district court of Anderson county, Kansas, be required and commanded by this court to render judgment on said agreed statement of facts in favor of the plaintiff in error, and plaintiff in error demands judgment for the costs of this proceeding and for all other and further relief.

J. W. ROSE,
Attorney for Plaintiff in Error.

Filed March 29, 1892.

C. J. BROWN,
Clerk Supreme Court.

4 In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff,
vs.
R. S. AYERS, Sheriff of Anderson County, Kansas; J. M. HARGRAVE, Treas. of Anderson Co., Kas., and The Board of County Commissioners of Anderson County, Kansas, Defendants.

Case Made.

EXHIBIT "A."

Be it remembered that on the 23rd day of December, 1891, the plaintiff filed its petition in the above and foregoing cause against the above-named defendants; which petition is in words and figures as follows, to wit:

In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff,
vs.
R. S. AYERS, Sheriff of Anderson Co., Kas.; J. M. HARGRAVE, Treasurer of Anderson County, Kansas, and The Board of County Commissioners of the County of Anderson, State of Kansas, Defendants.

Petition.

Comes now the plaintiff, The First National Bank, and for cause of action against the defendants herein complains and says that plaintiff is now and has been for more than two years last past a corporation duly organized, existing under the laws of the United States, and doing business in the city of Garnett, in the county of Anderson, State of Kansas.

Plaintiff further states that it is a banking corporation; that its capital stock amounts to the sum of $75,000.00, divided into 750 shares of the par value of $100.00 each.

Plaintiff further states that the actual value of said stock on the 1st day of March, 1890, was the sum of $100.00 per share and no more.

Plaintiff further says that the following-named persons were stockholders in the plaintiff bank and are now and were such on the 1st day of March, 1890, and that each of said parties hold- and then held the number of shares set opposite their respective names, each of which said shares was of the actual and par value of $100.00.

5 Names of stockholders.	No. of shares.	Total value of shares.
John R. Foster	279	27,900 00
R. H. Moore	20	2,000 00
A. J. Seber	10	1,000 00
John Gardner	30	3,000 00
Wm. A. Weatherman	30	3,000 00
M. V. B. Knox	20	2,000 00
A. J. McCoy	20	2,000 00
J. B. Rhodes	20	2,000 00
A. L. Scott	50	5,000 00
Herbert Capper	65	6,500 00
Alfred Weatherman	50	5,000 00
Herbert H. Miner	15	1,500 00
Samuel Crum	10	1,000 00
John M. Bowman	10	1,000 00
J. S. Chick	10	1,000 00
Jasper M. Broady	10	1,000 00
Jared Graham	10	1,000 00
J. W. Garrison	10	1,000 00
Benjamin Lombard, Jr	10	1,000 00
Anna H. Hunter	6	600 00
Ed. L. Foster	10	1,000 00
Jesse F. Foster	10	1,000 00
Mungo Young	5	500 00
Wm. Newton	5	500 00
W. G. Roth	4	400 00
Elizabeth Hicks	3	300 00
James T. Harvey	2	200 00
Geo. W. Iler	1	100 00
Ben. F. Hemry	20	2,000 00
S. L. Lowrey	5	500 00

Plaintiff further states that the said parties above named were all the stockholders of the said bank on the 1st day of March, 1890. Plaintiff further states that on the 1st day of March, 1890, the following-named stockholders in the plaintiff bank were justly indebted and owing in good faith the several sums of money set opposite their respective names, to wit:

W. G. Roth	$300 00
J. M. Bowman	1,000 00
Sam'l Crum	1,200 00
A. L. Scott	300 00
J. F. Harvey	500 00
A. J. McCoy	2,500 00
John Gardner	3,500 00

B. F. Henry	$3,000 00
J. W. Garrison	1,500 00
R. H. Moore	300 00
John R. Foster	9,500 00

That the total amount of the indebtedness of said stock-
6 holders on the first day of March, 1890, was and is the sum of $20,600.00. Plaintiff further states that said debts of said above-named stockholders *was* not owing to any person, company, or corporation as depositors in any bank or banking association or to any person or firm engaged in business of banking in this State or elsewhere; that said indebtedness above named was not on any bond, note, or obligation given to any mutual insurance company or deferred payment or loan for a policy of life insurance nor on account of any unpaid subscription to any religious, literary, scientific, or benevolent society, and that said debts were not created by a loan on Government bonds or other taxable securities.

Plaintiff further states that on the 31st day of May, 1890, this plaintiff filed in the office of the county clerk of Anderson county, Kansas, its annual statement, containing a list of the names of the stockholders of the plaintiff bank, the number of shares held by each stockholder, and the value of each share liable to taxation on the 1st day of March, 1890. As shown by said statement, the total number of shares of the plaintiff bank *were* 750, and they were of the total value of $75,000.00; that said statement was made out and sworn to by Ed. L. Foster, cashier and one of the managing officers of the plaintiff bank, and was sworn to on the 29th day of May, 1890, before one A. D. Sowerby, a notary public of Anderson county, Kansas, and was on the said date filed in the office of the county clerk of Anderson county, Kansas, a copy of which said statement is filed herewith, made a part hereof, and is marked Exhibit "A."

That on the eleventh day of June, 1890, the stockholders of the plaintiff bank who were owing debts in good faith, as hereinbefore stated, filed in the office of the county clerk of Anderson county, Kansas, their sworn statements showing the amount of debts which they were owing and claiming the right to deduct them from the value of the stock held by them in the plaintiff bank.

Plaintiff further states that on the 4th day of August, 1890, the defendant Board of County Commissioners of Anderson County, Kansas, assessed the capital stock of this plaintiff against the plaintiff bank; that they failed, neglected, and refused to assess said stock to the stockholders of the plaintiff bank.

Plaintiff further states that afterwards, on the 6th day of November, 1890, the stockholders of the plaintiff bank herein named who claimed to be owing debts in good faith asked to have the amount of said debts deducted from the value of their stock in the plaintiff bank, which said demand was supported by the affidavit of each of said stockholders, showing the nature and amount of the indebtedness which they were owing and which they were entitled to have deducted from the amount of their stock in the plaintiff bank,

which the said board of county commissioners then and there refused to allow.

Plaintiff further states that there has been levied and assessed against it on its capital stock taxes on the basis of $35,600.00, and that said assessment was entered upon the tax-rolls of Anderson county, Kansas, and placed in the hands of J. M. Hargrave, who was at the time that they were delivered to him, has been ever since, and now is the legally elected, qualified, and acting treasurer of the said Anderson county, Kansas; that at the August session, 1890, of the board of county commissioners of Anderson county there was levied by said board upon said assessment the sum of $1,715.92 tax, the same being the sum assessed on said assessment by a levy of $4.82 on one hundred dollars, which was and is the levy of said
7 year in the city of Garnett, Anderson county, Kansas, where plaintiff bank was on the 1st day of March, 1890, and is now located and situate.

Plaintiff further states that on the 20th day of February, 1891, the said J. M. Hargrave, as treasurer of said Anderson county, Kansas, did issue a tax warrant against the plaintiff bank for the collection of the amount of the taxes assessed against it upon the capital stock of said bank as aforesaid.

That on the 20th day of February, 1891, said tax warrant was delivered to the defendant R. S. Ayers, who was the then, has been ever since, and is now the duly elected, qualified, and acting sheriff of said Anderson county, Kansas; that immediately upon R. S. Ayers, sheriff aforesaid, receiving said warrant against this plaintiff he demanded of this plaintiff payment of the amount of the taxes due, as shown by said warrant, to wit, $1,801.72, which this plaintiff then and there refused to pay.

Plaintiff further states that said defendant, R. S. Ayers, sheriff aforesaid, was threatening and about to levy said tax warrant upon the property of this plaintiff; that on the 7th day of March, 1891, plaintiff filed its petition to restrain the collection of said tax for the reason that the same was void as not being assessed to the stockholders of plaintiff, and afterwards, on the 3rd day of April, 1891, said action was submitted to the court for trial by agreement of all parties and was on said day tried, and defendants were on said day by the court perpetually enjoined from collecting said tax from plaintiff, but without prejudice to said taxes being assessed to the stockholders of the plaintiff.

Plaintiff further states that afterwards, on the 18th day of April, 1891, the defendants the Board of County Commissioners assessed the stock in said bank to said stockholders and assessed against each of said stockholders the amount set opposite their respective names in a schedule hereafter set out; that in said schedule is set out the assessed value of the stock held by each stockholder.

Plaintiff further states that it has paid all the taxes assessed against its stockholders who do not claim deductions, which is shown in the schedule hereinbefore named and which schedule is as follows, to wit:

SCHEDULE.

Names of stockholders.	Value.	Total tax.	
J. R. Foster	$13,243 00		$598 59
R. H. Moore	949 00		42 90
A. J. Seber	474 00		21 44
John Gardner	1,424 00		64 37
W. H. Weatherman	1,424 00	Paid	64 37
M. V. B. Knox	949 00	Paid	42 90
A. J. McCoy	949 00		42 90
J. B. Rhodes	949 00	Paid	42 90
A. L. Scott	2,373 00		107 26
Herbert Capper	3,085 00	Paid	139 44
Alfred Weatherman	2,373 00	Paid	107 26
H. H. Miner	712 00	Paid	32 21
Sam'l Crum	474 00		21 44
John W. Bowman	474 00		21 44
8 J. F. Chick	$474 00	Paid	21 44
J. M. Broady	474 00	Paid	21 44
Jared Graham	474 00	Paid	21 44
J. W. Garrison	474 00		21 44
B. Lombard, Jr	474	Paid	21 44
Anna H. Hunter	284 00	Paid	12 84
E. L. Foster	474 00	Paid	21 44
Jesse F. Foster	474 00	Paid	21 44
M. Young	237 00	Paid	10 71
Wm. Newton	237 00	Paid	10 71
W. G. Roth	189 00		8 55
E. Hicks	142 00	Paid	6 42
James T. Harvey	94 00		4 30
Geo. W. Iler	47 00	Paid	2 13
B. F. Henry	949 00		42 91
S. L. Lowry	237 00	Paid	10 71

Plaintiff further states that at the time of said assessment, on April 18, 1891, its stockholders who were owing debts again presented their affidavits and demand that said debts be deducted from the value of their stock, which request was then and there refused.

Plaintiff further states that there is yet legally due and owing from its stockholders, after deducting their just debts, as hereinbefore stated, the following amounts:

J. R. Foster	$386 00
R. H. Moore	35 71
A. L. Scott	98 77
W. G. Roth	2 04
Total	$522 52

Leaving amount due and owing from plaintiff for taxes yet due from its stockholders the sum of $522.52.

Plaintiff further states that on May 6th, 1891, that it tendered said sum to the defendant, J. M. Hargrave, county treasurer of Anderson county, Kansas, which tender has been kept good, and which plaintiff here and now tenders to him; that said treasurer refused to accept said tender and still so refuses.

Plaintiff further states that on the 22d day of October, 1891, the defendant J. M. Hargrave, county treasurer, issued tax warrants against all of the plaintiff's stockholders who have not paid the taxes levied against them, to wit, against—

J. R. Foster	for.....	$598 59
R. H. Moore	"	42 90
A. J. Seber	"	21 44
John Gardner	"	64 37
A. J. McCoy	"	42 90
A. L. Scott	"	107 26
Sam'l Crum	"	21 44
John W. Bowman	"	21 44
J. W. Garrison	"	21 44
W. G. Roth	"	8 55
Jas. F. Harvey	"	4 30
B. F. Henry	"	42 91

9 and delivered the same to R. S. Ayers, sheriff, defendant herein, who now holds the same, and is threatening and is about to levy the same on the property of said stockholders above named and upon the property of this plaintiff, and that said defendant will, unless restrained by the order of this court, levy upon the property of this plaintiff and said stockholders last above named.

Plaintiff further states that its said stockholders are entitled to have deducted from their shares of stock held in plaintiff bank the amount of their debts which they are justly owing in good faith and which are not *accepted* by law from being deducted from their credits; that by reason of the defendants The Board of County Commissioners having refused said stockholders the right to deduct said debts from the value of their stock said stockholders will be greatly damaged, and that said damage will be irreparable unless the defendants here are restrained by the order of this court from collecting more than is legally due.

Plaintiff further states that its stockholders having debts to deduct from credits have been discriminated against in the assessment of the taxes herein named, and by reason of said discrimination they will be compelled to pay a higher rate of tax on their stock than other individuals will be compelled to pay on their credits.

That on the 3rd day of March, 1890, the assessors of the various townships in said county of Anderson, Kansas, met in the office of the county clerk of Anderson county, Kansas, as provided by law, and fixed the valuation for the assessment of personal property in said county for the year 1890 at one-half its cash value and upon credits and bank stock at one-half its cash value; that the capital

stock of plaintiff bank is assessed at one-half its cash value and as high as other personal property and credits in said county.

Plaintiff further states that it brings this suit at the request of its stockholders and to avoid a multiplicity of lawsuits by its stockholders; that plaintiff has already paid the tax due from the stockholders who claim no deduction and has agreed to pay the taxes legally due from the stockholders who claim deductions, and has tendered the full amount legally due and is now ready and willing to pay all legal taxes now due and owing from its stockholders for the year 1890.

Wherefore the plaintiff prays the consideration of the court in the premises and asks a temporary restraining order be issued herein until such time as this case can be regularly heard for trial; that upon trial *that* the restraining order be made perpetual, and that plaintiff's stockholders, as hereinbefore named, may be allowed to deduct from the value of their stock the amount of debts which they are owing in good faith, as stated in the petition, and that plaintiff have judgment for costs and for all other and proper relief.

J. W. ROSE,
Attorney for Plaintiff.

The above and foregoing petition was all the pleadings filed in the above and foregoing case."

Be it remembered that on the said 23rd day of December, 1891, the parties to the above-entitled cause voluntarily entered their appearance to said cause, and thereupon the following agreed statement of facts was filed in said cause, which said agreed statement of facts is in words and figures as follows, to wit:

10 In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff,
vs.
R. S. AYRES, County Sheriff of Anderson County, Kansas; J. M. Hargrave, Treasurer of Anderson County, Kansas, *et al.*, Defendants.

Agreement: Statement of Facts.

Comes now the parties to the above-entitled action and hereby voluntarily enter into the following agreed statement of facts:

First. It is admitted that plaintiff is a corporation organized under the laws of the United States with its office at the city of Garnett, in Anderson county, Kansas.

It is admitted that R. S. Ayers is now, has been during the entire year of 1891, the duly elected, qualified, and acting sheriff of Anderson county, Kansas.

It is admitted that J. M. Hargrave is now and was during all the time mentioned in plaintiff's petition the duly elected, qualified, and acting treasurer of Anderson county, Kansas.

Second. It is admitted that the plaintiff is a national bank, with capital stock $75,000.00, divided into 750 shares of the par value of $100.00 each. It is further admitted that on the 1st day of March, 1890, the actual value of said stock per share was $100.00 share and no more.

It is admitted that the list of stockholders set forth in plaintiff's petition, with the number of shares held by each, and the total value of said shares as set forth in said petition, is a true and correct list of the names of the stockholders in the plaintiff bank, and is a true statement of the number of shares of stock held by each of said slockholders, and is a true statement of the value of said shares.

It is admitted that on the 1st day of March, 1890, *that* the following-named stockholders of the plaintiff bank, to wit, W. G. Roth, J. M. Bowman, Samuel Crum, A. L. Scott, J. F. Harvey, A. J. McCoy, John Gardner, B. F. Henry, J. W. Garrison, R. H. Moore, and John R. Foster were justly indebted and owing in good faith several sums of money set opposite their respective names in the plaintiff's petition. It is further admitted that the debts owing by the above-named stockholders were not owing to any person, company, or corporation as depositors in any bank or banking association or with any person or firm engaged in the business of banking in this State or elsewhere.

It is further admitted that said debts above named are not owing on account of any note, bond, or obligation given to any mutual insurance company or deferred payment or loan for a policy of life insurance nor on account of any unpaid subscription to any religious, literary, scientific, or benevolent institution or society.

It is further admitted that said debts above named were not created by a loan, Government bonds, or other taxable securities.

It is hereby further agreed by and between the parties to this suit that on the 31st day of May, 1890, Ed. L. Foster, cashier of plaintiff bank, made out and filed in the office of the county
11 clerk of Anderson county, Kansas, an annual statement of the bank stockholders, showing the name of each stockholder and the number of shares held by each and the total value of said shares, said statement also contained a list of all the real estate owned by the plaintiff in good faith and to which it held the title in fee-simple. It is also admitted that said real estate the year 1890 was assessed at the sum of $1,900.00, and that was all the real estate this plaintiff owned. It is admitted that on the — day of ——, 1890, the defendant Board of County Commissioners levied and assessed a tax upon the stock of plaintiff in gross and assessed the same in the name of plaintiff and not in the name of its stockholders. It is further admitted that on the — day of June, 1890, the stockholders of the plaintiff, hereinbefore named, filed their affidavits in writing with the county clerk of Anderson county, Kansas, asking that they be allowed to deduct from the value of their stock the amount of debts which they were justly owing in good faith as hereinbefore set forth. It is further admitted that said board of county commissioners refused said request and assessed said stock

in solido against plaintiff. It is further admitted that for the year 1890 the assessors of the various townships and citizens of Anderson county, Kansas, met at the office of the county clerk of said county, as provided by law, to fix the equal basis of valuation for the assessment of personal property for the year 1890; that said meeting was held on the 3rd day of March, 1890; that all the stocks of goods, notes, mortgages, bank stock, and other personal property was to be valued for the purpose of assessment at one-half of its cash value and that the assessment against the plaintiff was made upon the basis of fifty per cent. of its cash value, from which was deducted the assessed value of the real estate owned by plaintiff. It is admitted that the taxes so levied on stock of plaintiff amounted to the sum of $1,715.92.

It is admitted that the stockholders of the First National Bank of Garnett, who were owing debts, as her-inbefore stated, made due and legal demand of the board of county commissioners of Anderson county, Kansas, to have deducted from the value of their stock the amount of debts which they were owing in good faith, which demand was refused by said board.

It is admitted that said stockholders *has* not been allowed the deductions herein claimed from the value of their credits any other place.

It is admitted that on the 20th day of February, 1891, a tax warrant was issued by J. M. Hargrave, county treasurer for said tax so assessed upon plaintiff's stock, and the said tax warrant was delivered to the defendant R. S. Ayers, sheriff, who immediately demanded payment of the same from plaintiff, which payment was refused; that thereupon said sheriff threatened and was about to levy upon the property of this plaintiff to satisfy said tax warrant. It is further agreed that on the 7th day of March, 1891, plaintiff filed a petition in the district court of Anderson county, Kansas, to perpetually restrain the defendants herein from collecting said tax so assessed against plaintiff upon said stock; that thereafter, on the 3rd day of April, 1891, said injunction proceedings were tried by agreement of parties and judgment was therein rendered perpetually enjoining defendants from collecting said tax so assessed against plaintiff *in solido*, but without prejudice to said tax being levied
12 against plaintiff's stockholders.

It is further admitted that on the 18th day of April, 1891, that tax was assessed against each of plaintiff's stockholders for the several sums named in the schedule found on pages 5 and 6 of the plaintiff's petition. It is further admitted that the following-named stockholders of the plaintiff, to wit, J. R. Foster, R. H. Moore, A. J. Seber, John Gardner, A. J. McCoy, A. L. Scott, Samuel Crum, John W. Bowman, J. W. Garrison, W. G. Roth, James T. Harvey, and B. F. Henry, each presented their affidavits of being indebted as hereinbefore stated, claiming the right to deduct said debts from the value of their stock.

It is admitted that said debts were of the kind and character that could be deducted from credits under the statutes of Kansas. It is admitted that due and legal demand was made to have said debts

deducted from the value of said stock, and that said demand was refused by the board of county commissioners. It is further admitted that said debts were justly due and owing on the first day of March, 1890, and that — have not been deducted from credits at any time or place during the year 1890. It is admitted that plaintiff has paid the taxes assessed against its stockholders who do not claim any deductions, and that the only taxes remaining due are those assessed against the twelve stockholders hereinbefore named who claim deductions. It is further admitted that if said deductions are allowed that there is due from the stockholders who claim deductions the following amounts:

From J. R. Foster	$386 00
" R. H. Moore	35 71
" A. L. Scott	98 77
" W. G. Roth	2 04

It is further admitted that the debts of A. J. Seber, John Gardner, A. J. McCoy, Samuel Crum, John W. Bowman, J. W. Garrison, James T. Harvey, and B. F. Henry equal or exceed the value of their stock.

It is further agreed that on the 6th day of May, 1891, John R. Foster, president of the plaintiff bank, tendered to the treasurer of Anderson county, Kansas, for the tax on the stock of J. R. Foster in the plaintiff bank, $386.00; for R. H. Moore, $35.71; for A. L. Scott, $98.77; for W. G. Roth, $2.04; which said tender was in legal-tender currency and which tender was by the said county treasurer refused; that plaintiff has kept said tender good and now tenders the same in court to the defendant county treasurer. It is further agreed that on the 22nd day of October, 1891, J. M. Hargrave, county treasurer as aforesaid, issued a tax warrant against the following-named stockholders of the plaintiff bank for the amount following each of their several names:

J. R. Foster	$598 59
R. H. Moore	42 90
A. J. Seber	21 44
John Gardner	64 37
A. J. McCoy	42 90
A. L. Scott	107 26
Samuel Crum	21 44
John W. Bowman	21 44
J. W. Garrison	21 44
W. G. Roth	8 55
James T. Harvey	4 30
B. F. Henry	42 91

13 That said tax warrants were duly delivered to the defendant R. S. Ayers, sheriff, and that he is threatening and about to levy said warrants upon the property of this plaintiff and said stockholders, and that unless restrained by the order of this court he will so levy said tax warrants. It is admitted that the plaintiff

or its stockholders has no adequate remedy at law, and to avoid a multiplicity of suits it is agreed that no question shall be raised in regard to the powers of the plaintiff to sue for the benefit — its stockholders in this action.

It is further agreed that the only question submitted in this case is, "Is national bank stock a credit from which debts may be deducted?"

It is further agreed that the above and foregoing stipulation contains all the facts in this case.

J. W. ROSE, *Att'y for Pl'ff.*
MANFORD SCHOONOVER,
Att'y for Def't-.

The above and foregoing petition and agreed statement of fact was all the evidence introduced on the trial of said cause.

Be it further remembered that afterwards and on the 23rd day of December, 1891, said case, by agreement of parties, came duly on for trial on the plaintiff's petition and agreed statement of fact filed in said case, and the court, after due consideration, found generally for the defendants and entered judgment for said defendants for the costs of said action against the plaintiff; to which finding and judgment of the court the plaintiff at the time excepted. A copy of the journal entry of the judgment rendered in said case is in words and figures as follows, to wit:

In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff,
vs.
R. S. AYERS *et al.*, Def'ts.

Journal Entry.

Be it remembered that now, on this 23rd day of December, 1891, the same being a regular day of the adjourned September term of said court, the parties to the above-entitled — on this day enter their voluntary appearance to this case, and thereupon the parties voluntarily submit this case for decision upon an agreed statement of facts.

Thereupon on said day the court, after due consideration, finds for the defendants and each of them upon the facts so submitted.

Said statement of fact contains all the evidence in the case.

It is therefore considered, ordered, and adjudged by the court that defendant- do have and recover of and from the plaintiff the costs of this action, taxed at $—, and that defendants go hence without day.

14 To which finding and judgment of the court the plaintiff excepts.

Thereupon and on this 23rd day of December, 1891, plaintiff filed its motion for a new trial, which motion is by the court overruled; to which ruling of the court plaintiff excepts.

Thereupon plaintiff prayed an appeal to the supreme court, which is granted, and the court for good cause shown grants plaintiff 60 days to make and serve a case made on defendants for the supreme court, defendants to have 10 days to suggest amendments, case to be settled on five days' notice.

The above and foregoing journal entry was all the orders, journal entries, and judgments made and entered in said case.

Be it further remembered that upon the statement of the findings of the court against the plaintiff on said 23rd day of Dec., 1891, the plaintiff filed its motion in writing for a new trial.

A copy of which said motion is in words and figures as follows, to wit:

In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Pl'ff,
vs.
R. S. AYERS *et al.*, Def'ts.

Motion for a New Trial.

Comes now the plaintiff and moves the court to vacate, set aside, and annul the decision of the court rendered in this case and to grant plaintiff a new trial for the reasons following, to wit:

1st. The decision of the court is not sustained by sufficient evidence and is contrary to law.

2nd. Error of law occurring at the trial and excepted to by the plaintiff at the time.

J. W. ROSE,
Att'y for Pl'ff.

The above and foregoing is a full, true, and correct statement of all the pleadings, motions, orders, evidence, agreed statement of facts, judgments, and proceedings upon which judgment was rendered in the above-entitled cause.

J. W. ROSE,
Att'y for Pl'ff.

I, the undersigned, attorney for the defendant in the above and foregoing case, hereby certify that said case made was duly served on me on this the 19th day of February, 1892; that I have carefully examined the same and found the same correct in every particular and have no amendments to suggest, and I hereby agree and consent that said case made may be settled at any time by the
15 judge of the district court of Anderson county, Kansas, at any time or place where the same may be presented without further notice to me and without my personal presence.

MANFORD SCHOONOVER,
Attorney for Defendants.

In the District Court of Anderson County, Kansas.

THE FIRST NATIONAL BANK OF GARNETT, Plaintiff,
vs.
R. S. AYERS, Sheriff of Anderson Co., Kansas, *et al.*, Defendants.

This is to certify that the above and foregoing case made was duly served in time, and that there were no amendments nor suggestions to the same, and the same was duly submitted to me for settlement and signing as required by law.

The plaintiff appearing by J. W. Rose, its attorney, and the defendants having waived their right to be personally present.

That the said case made as above set forth is true and correct and contains a true and correct statement and copies of all pleadings, motions, orders, evidence, agreed statement of facts, findings, proceedings, and judgments had in said cause, and I hereby settle, allow, and certify and sign the same as true and correct, and hereby order the clerk of the district court of Anderson county, Kansas, to attest the same with his signature and seal of said court and to file the same of record in said court as required by law.

Witness my hand, at Garnett, this 21st day of March, 1892.

A. W. BENSON,
Judge of the District Court.

Attest:
W. P. McDONALD,
Clerk of Dist. Court of Anderson County, Kansas.

Filed in my office this 21st day of March, 1892.
[SEAL.] W. P. McDONALD,
Clerk of District Court of Anderson County, Kansas.

Filed March 29th, 1892. C. J. Brown, clerk supreme court.

16 And also, on the 29th day of March, 1892, summons in error issued from the supreme court in the above-entitled cause, which summons in error, with the return of service of the same endorsed thereon, is in words and figures as follows, to wit:

17 STATE OF KANSAS, } ss:
Supreme Court,

The State of Kansas to the sheriff of Anderson county, Greeting:

You are hereby commanded to notify R. H. Ayres, sheriff; J. M. Hargrave, treasurer, and The Board of County Commissioners of Anderson County, Kansas, defendants in error, that The First National Bank of Garnett, plaintiff in error, did, on the 29th day of March, A. D. 1892, file in the clerk's office of the supreme court of Kansas a petition in error and transcript of record or case made, the object of which is to obtain a reversal of a certain judgment rendered by the district court sitting within and for the county of Anderson and State of Kansas, in an action pending before said court,

wherein the said plaintiff in error was plaintiff and the said defendants in error were defendants.

You will make due return of this summons in error on or before the 8th day of April, A. D. 1892.

Witness my hand and the seal of the supreme court affixed hereto, at my office in Topeka, this 29th day of March, A. D. 1892.

[SEAL.] C. J. BROWN,
Clerk Supreme Court,
By E. D. WRIGHT, *Deputy.*

18 [Endorsed:] No. 8274. Supreme court, State of Kansas. First National Bank of Garnett *vs.* R. H. Ayres *et al.* Summons in error. Issued M'ch 29, 1892. Returnable April 8, 1892. Filed Ap. 4, 1892. C. J. Brown, clerk supreme court. J. W. Rose, attorney for plaintiff in error.

STATE OF KANSAS, } *ss:*
County of Anderson, }

I received this summons in error on the 31st day of March, 1892, at 2 o'clock p. m., and served the same on the 31st day of March, 1892, by delivering to Manford Schoonover, attorney for defendants, a true copy of this writ, with all the endorsements thereon.

J. W. FARRIS, *Sheriff,*
By A. P. FARRIS,
Under Sheriff.

Fees.

Service	.50
Mileage	..
Copy	.25
	.75

19 And afterwards, on the 5th day of April, 1894, the same being one of the regular judicial days of the January term, 1894, of the supreme court of the State of Kansas, before said court in session at the supreme court room in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable William A. Johnston and Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

THE FIRST NATIONAL BANK OF GARNETT, Pl'ff in Error,
vs.
R. S. AYRES, Sheriff, *et al.*, Def'ts in Error. } No. 8274.

This cause comes on to be heard on the petition in error and transcript of the record of the district court of Anderson county, and thereupon said cause is submitted on brief of counsel for both parties and taken under advisement by the court.

20 And afterwards, on the 5th day of May, 1894, the same being one of the regular judicial days of the January term,

1894, of the supreme court of the State of Kansas, before said court in session at the supreme court room in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable William A. Johnston and Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

THE FIRST NATIONAL BANK OF GARNETT, Pl'ff in Error,
vs.
R. S. AYRES, Sheriff of Anderson County, *et al.*, Def'ts in Error. } No. 8274.

This cause comes on for decision; and thereupon, it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiff in error pay the costs of this case in this court, taxed at $—, and hereof let execution issue.

21 And also on the 5th day of May, 1894, there was filed in the office of the clerk of said court the opinion of the court in said cause, which opinion, together with the syllabus and opinion of the court in the case of Charles W. Dutton *vs.* The Citizens' National Bank of Concordia, to which special reference is made, are in words and figures as follows, to wit:

22 THE FIRST NATIONAL BANK OF GARNETT
vs.
R. S. AYRES, Sheriff of Anderson County, *et al.* } No. 8274.

Error from Anderson county affirmed.

Opinion per Curiam.

The substantial questions involved in this case are the same as those in Charles W. Dutton *v.* The Citizens' National Bank of Concordia, No. 9582, and the judgment herein is affirmed for the reasons stated in the opinion in that case.

A true copy.
Attest:

——— ———,
Clerk Supreme Court.

23 CHARLES W. DUTTON, County Clerk of Cloud County,
vs.
THE CITIZENS' NATIONAL BANK OF CONCORDIA. } 9582.

Error from Cloud county reversed.

Syllabus by the Court—Allen, J.

1. The word credit as defined in paragraph 6847 of the General Statutes of 1889 and used in the chapter providing for the assessment and collection of taxes does not include shares of stock in a national bank, and the owners of such shares have no right to deduct from their assessed value the amount of their debts.

wherein the said plaintiff in error was plaintiff and the said defendants in error were defendants.

You will make due return of this summons in error on or before the 8th day of April, A. D. 1892.

Witness my hand and the seal of the supreme court affixed hereto, at my office in Topeka, this 29th day of March, A. D. 1892.

[SEAL.] C. J. BROWN,
Clerk Supreme Court,
By E. D. WRIGHT, *Deputy.*

18 [Endorsed:] No. 8274. Supreme court, State of Kansas. First National Bank of Garnett *vs.* R. H. Ayres *et al.* Summons in error. Issued M'ch 29, 1892. Returnable April 8, 1892. Filed Ap. 4, 1892. C. J. Brown, clerk supreme court. J. W. Rose, attorney for plaintiff in error.

STATE OF KANSAS, }
County of Anderson, } *ss:*

I received this summons in error on the 31st day of March, 1892, at 2 o'clock p. m., and served the same on the 31st day of March, 1892, by delivering to Manford Schoonover, attorney for defendants, a true copy of this writ, with all the endorsements thereon.

J. W. FARRIS, *Sheriff,*
By A. P. FARRIS,
Under Sheriff.

Fees.

Service	.50
Mileage	..
Copy	.25
	.75

19 And afterwards, on the 5th day of April, 1894, the same being one of the regular judicial days of the January term, 1894, of the supreme court of the State of Kansas, before said court in session at the supreme court room in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable William A. Johnston and Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

THE FIRST NATIONAL BANK OF GARNETT, Pl'ff in Error, }
vs. } No. 8274.
R. S. AYRES, Sheriff, *et al.*, Def'ts in Error. }

This cause comes on to be heard on the petition in error and transcript of the record of the district court of Anderson county, and thereupon said cause is submitted on brief of counsel for both parties and taken under advisement by the court.

20 And afterwards, on the 5th day of May, 1894, the same being one of the regular judicial days of the January term,

1894, of the supreme court of the State of Kansas, before said court in session at the supreme court room in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable William A. Johnston and Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

THE FIRST NATIONAL BANK OF GARNETT, Pl'ff in Error,
vs.
R. S. AYRES, Sheriff of Anderson County, *et al.*, Def'ts in Error. } No. 8274.

This cause comes on for decision; and thereupon, it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiff in error pay the costs of this case in this court, taxed at $—, and hereof let execution issue.

21 And also on the 5th day of May, 1894, there was filed in the office of the clerk of said court the opinion of the court in said cause, which opinion, together with the syllabus and opinion of the court in the case of Charles W. Dutton *vs.* The Citizens' National Bank of Concordia, to which special reference is made, are in words and figures as follows, to wit:

22 THE FIRST NATIONAL BANK OF GARNETT
vs.
R. S. AYRES, Sheriff of Anderson County, *et al.* } No. 8274.

Error from Anderson county affirmed.

Opinion per Curiam.

The substantial questions involved in this case are the same as those in Charles W. Dutton *v.* The Citizens' National Bank of Concordia, No. 9582, and the judgment herein is affirmed for the reasons stated in the opinion in that case.

A true copy.
Attest:

____ ____,
Clerk Supreme Court.

23 CHARLES W. DUTTON, County Clerk of Cloud County,
vs.
THE CITIZENS' NATIONAL BANK OF CONCORDIA. } 9582.

Error from Cloud county reversed.

Syllabus by the Court—Allen, J.

1. The word credit as defined in paragraph 6847 of the General Statutes of 1889 and used in the chapter providing for the assessment and collection of taxes does not include shares of stock in a national bank, and the owners of such shares have no right to deduct from their assessed value the amount of their debts.

2. The statute of this State which permits debts owing in good faith by any person, company, or corporation to be deducted from the gross amount of credits belonging to such person, company, or corporation in listing their property for taxation when the owners of shares of stock in a national bank are not allowed to deduct their indebtedness from the value of such shares is not in conflict with section 5219 of the General Statutes of the United States, does not operate to tax such shares at a greater rate than other moneyed capital in the hands of individual citizens, and is valid, the law providing that all corporate stocks, all moneys secured by judgment or lien on real estate, all moneys on deposit in any bank subject to withdrawal on demand, and substantially all moneyed capital of every description invested for profit shall be subject to taxation without reduction of indebtedness.
3. Injunction cannot be maintained to prevent the collection of a tax which the plaintiff justly ought to pay for mere irregularities in the proceedings of the assessor or other taxing officer.

All the justices concurring.

A true copy.
Attest:

——— ———,
Clerk Supreme Court.

24 CHARLES W. DUTTON, County Clerk of Cloud County, } 9582.
vs.
THE CITIZENS' NATIONAL BANK OF CONCORDIA. }

Error from Cloud county. Statement.

The amended petition in this case alleges that the plaintiff is a corporation formed under the laws of the United States, engaged in the business of banking at Concordia; that the authorized capital stock is $100,000, divided into 1,000 shares of $100 each, 96 of which are paid in full; that the defendant is county clerk of Cloud county; that on the first Monday of March, 1893, the assessors of the various townships and cities of Cloud county agreed among themselves to assess taxable property at ⅓ of its real value; that on the 9th day of May J. W. Peterson, cashier of the plaintiff's bank, returned under oath to D. H. Judy, the city assessor of Concordia, a list of the names of the stockholders of the plaintiff bank and the amount and value of the stock held by each, together with the value of the undivided profits and surplus and a list of the real estate owned and held by the plaintiff; that thereupon, on the said 9th day of May, said assessor assessed George Palmer, one of the stockholders of said bank, on ten shares of capital stock, and said Palmer having filed with him an affidavit stating the amount of stock held by him, and that he was in good faith indebted in the sum of $1,000.00 and had no other credits from which to deduct the same, and that he desired the same to be deducted from said stock so held by him, said assessor set off said indebtedness against said 10 shares of stock and did not assess said Palmer on account of his being the owner

and holder thereof. Then follow similar allegations with reference to the assessment of stock held by various other persons in the plaintiff's bank. It is then averred that on said date the plaintiff was owner and holder of 40 shares of its stock held in its own name, which was not listed by the said Judy for taxation; that the affidavits made and filed by said parties as a part of their statements of personal property set out in full the amount and nature of all the credits owned by such parties and the amount and nature of the debts sought by them to be deducted therefrom, giving the names of the several creditors to whom they were indebted; that the debts owing by them were *bona fide* and were not owing to any person, company, or corporation as depositors in any bank or banking association, or with any firm engaged in the business of banking in this State or elsewhere, nor in any bond, note, or obligation given to any mutual insurance company or deferred payment or loan for a life insurance policy or on account of any unpaid subscription to any religious, literary, scientific, — benevolent institution or society, nor were said debts or any of them created by a loan on Government bonds or other non-taxable securities, nor had any of said stockholders other credits from which said debts or any part thereof might have been deducted.

It is then alleged that the county commissioners of Cloud county and the defendant, as county clerk, met as a board of equalization, and that on the 6th of June said board ordered D. H. Judy, as assessor of the city of Concordia, to return the value of the stock of the shareholders of the First National bank and the Citizens' National bank doubly assessed; that thereupon said Judy, without any notice to the parties named as stockholders, without their knowledge or consent entered on the assessment-list the words "doubly assessed" in the column designating the amount of personal property subject to taxation; that said board ordered and directed that no deductions on account of the indebtedness owing by said parties be allowed, and that each of said parties be assessed as the owners of said stock at the full value thereof, and that the order so made apply to the taxes for the year 1892. It is further stated that in making the assessment-lists of personal property belonging to the various tax-payers in the several townships and cities of said county for the years 1892–'3 it was the custom of the assessors to allow the tax-payers to set off the debts owing by them against the credits owned and possessed by them, the remainder only being returned for taxation. It is then alleged that the defendant, as county clerk, was about to extend on the tax-rolls the various taxes levied and to charge the same against said stockholders upon the basis of the amount as fixed by the board of equalization. An injunction was sought restraining the defendant from extending on the tax-rolls taxes levied on the several amounts first credited on their assessments for debts due and owing by them, and also on the $4,000 stock owned by the bank, and also on account of the "double assessment" for the taxes of 1892.

A general demurrer was interposed to the petition, which the court overruled. The defendant not desiring to further plead, and

standing on the demurrer, judgment was entered granting a perpetual injunction as prayed for and for costs.

26 CHARLES W. DUTTON, County Clerk of Cloud County, vs. THE CITIZENS' NATIONAL BANK OF CONCORDIA. } 9582.

Error from Cloud county reversed.

The opinion of the court was delivered by ALLEN, *J.*:

The principal question in this case is as to the right of the holder of stock in a national bank to deduct his indebtedness from the value of the stock where he has no other credits from which such deduction can be made. In support of this contention two claims are made: 1, that the term credit as defined in paragraph 6847 includes stock in a national bank; 2, that section 5219 of the Revised Statute of the United States prohibits taxation of national bank shares at a greater rate than other moneyed capital in the hands of the individual citizens of the State, and that, as individual citizens are allowed to deduct their debts from their credits of a certain class, like deductions must be allowed holders of national bank stock.

We will consider these questions in the order stated.

1. The statutory definition of the word credit, as given in paragraph 6847, is as follows: "The term credit when used in this act shall mean and include every demand for money, labor, or other valuable thing, whether due or to become due, but not secured by lien on real estate." The clause under which exemption is claimed, being the last part of paragraph 6851, reads as follows:

27 "Debts owing in good faith by any person, company, or corporation may be deducted from the gross amount of credits belonging to such person, company, or corporation, provided such debts are not owing to any person, company, or corporation as depositors in any bank or banking association or with any person or firm engaged in the business of banking in this State or elsewhere, and the person, company, or corporation making out the statement of personal property to be given to the assessor claiming deductions herein provided for shall set forth both the amount and nature of his debts sought to be deducted, but no person, company, or corporation shall be entitled to any deduction on account of any bond, note, or obligation given to any mutual insurance company, or deferred payment or loan for a policy of life insurance, nor on account of any unpaid subscription to any religious, literary, scientific, or benevolent institution or society, provided that in deducting debts from credits no debt shall be deducted where said debt was created by a loan on Government bonds or other non-taxable securities." Paragraph 6846 provides "that all property in this State, real and personal, not expressly exempt therefrom shall be subject to taxation in the manner prescribed by this act."

By the various articles in chapter 107 on taxation provision is made for the assessment and taxation of the various classes of prop-

erty. Article 6, as amended by chapter 84 of the Laws of 1891, provides for the assessment of stock in banks and other corporations. No hint is contained in any part of this article that such stock is to be treated as a credit in the hands of the stockholder. Only the net value of the shares is required to be returned. Banking and other corporations are allowed, in determining the value of their shares, to deduct all indebtedness, all liabilities of every kind and character, not only from their credits, but from their assets of every description. The value of these shares is made up by summing up
28 all real and personal property, moneys, credits, stocks in other companys, and effects of every character and description, and deducting therefrom lands which are specifically taxed and all debts, obligations, and liabilities, no matter how secured or of what kind. The net value of a share is only the amount that can be realized from the property of the company after its obligations are paid. It is true that in making the assessment neither the assessor, the bank, nor the stockholder is required to go through the process of determining the value of the stock in this manner, but it is fixed at its true value, which can, of course, only be determined from the amount of its assets and liabilities. It is apparent that the holders of stock in banks and other corporations have a material advantage over private individuals, in that they are, in effect, allowed to deduct from the value of all their assets, real property alone excepted, all their indebtedness of every kind and character. In this respect moneys invested through the medium of corporations have a very great advantage over that invested by individuals in personal property. Money and all credits secured by liens on real estate are also taxable under the statute in the hands of individuals without deduction. In respect to such property there is discrimination in favor of banks and other corporate capital. Merchants and manufacturers by the terms of article 5 are required to return for taxation the average value of merchandise held by them. It matters not whether the owner is indebted for any or all of such stock, taxes must be paid on it without deduction.

The statutory definition of the word "credit" must be construed in the light of all of the provisions of the statute on the subject of taxation. It is by no means clear that stock in a corporation is a demand for money, labor, or other valuable thing, either present or future. The stockholder has no right to demand from the
29 corporation any sum whatever or any valuable thing whatever. If the concern is prosperous and the board of directors so determine, he may be entitled to receive dividends, but he may not demand them until they are declared.

On a general winding up of the business of a corporation he may be entitled to receive more or less than the face value of the shares, but he has no right to demand any part of it so long as the corporation is prosecuting its business under its charter. If the venture proves disastrous he may be forced to pay losses rather than to receive profits. We think that shares of stock are rather certificates of an interest in an enterprise and in the property of every description

subject to the liabilities of the corporation rather than a demand for anything. It is a strained construction of the word "credit" or of the word "demand" to hold it to include stocks in a corporation. The decisions to which our attention is called, which seem to give countenance to such a definition as is contended for by the bank, we think, are to be viewed rather as applications of the substantial requirements of the United States statute than as affording a definition of the word credit as used in the laws of this State; but if the construction of the statutory definition of the word credit contended for by the defendant in error is correct, the question arises whether the legislature had the power to grant banking corporations such favors.

Section 2 of article II of the constitution is as follows: "The legislature shall provide for taxing the notes and bills discounted or purchased, moneys loaned, and other property, effects, or dues of every description (without deduction) of all banks now existing or hereafter to be created and of all bankers, so that all property employed in banking shall always bear a burden of taxation equal to that imposed upon the property of individuals." In pro-
30 viding for the taxation of banks the legislature seems to have always disregarded this provision of the constitution, which requires that the value of all property and of all credits of every description held by banks shall be taxed without deduction. The legislature provides only for taxing the net worth of the bank, thereby greatly reducing the amount of property to be taxed. If this provision of the constitution had been followed by the legislature there would be ample ground for contending that banking capital was discriminated against, yet, as the fundamental law of the land so requires, there could be no question as to the validity of laws framed in accordance with the provisions of the section of the constitution quoted, so far as it affected corporations created under the laws of this State. A question, however, would arise under the act of Congress referred to as to whether the taxation of shares in national banks was at a higher rate than that on moneyed capital in the hands of individuals. We conclude, therefore, that the word "credit" as used and defined in the chapter of the general statutes on the subject of taxation does not include shares of stock in banking and other corporations.

2. Section 5219 of the Revised Statutes of the United States provides: "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located, but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking associa-
31 tion owned by non-residents of any State shall be taxed in the city or town where the bank is located and not else-

where. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes to the same extent, according to its value, as other real property is taxed."

The claim made in this case and the others argued and submitted at the same time with it of a right to deduct individual indebtedness from the value of national bank stock by the owner is a novel one. So far as our knowledge extends, such right has never before been claimed, but the shares of stock in national and State banks have always been taxed without such deductions.

Counsel have industriously presented the decisions, not only of the Supreme Court of the United States bearing on the question, but those by the courts of last resort in sister States.

As this is a question of the construction of an act of Congress, the decisions of the Supreme Court of the United States are controlling, and it becomes our duty to carefully examine the construction given to the section under consideration by that tribunal. In the case of Hepburn *vs.* School Directors, 23 Wallace, 480, it was held that shares in national banks may be valued for taxation for county, school, municipal, and local purposes at an amount above their par values, and that such shares are not exempt from taxation, although by the statute of Pennsylvania "all mortgages, judgments, recognizances, and monies owing upon articles of agreement for the sale of real estate are made exempt from taxation in that county except for State purposes;" and in the opinion in that case the court says: "It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

In Adams *vs.* Nashville, 95 U. S., 19, it was held that "the act
32 of Congress approved June 3, 1864, was not intended to curtail the power of the States on the subject of taxation or to prohibit the exemption of particular kinds of property, but to protect the corporations formed under its authority from unfriendly discrimination by the States in the exercise of their taxing power."

Under the laws of New York tax-payers had the right to deduct their just debts from the value of personal property owned by them, and the balance only was subject to taxation. The legislature in 1866 provided for taxing shares in State and national banks, subject only to a deduction of the value of the real estate held by the bank, which also was subject to taxation directly.

In the case of People *v.* Weaver, 100 U. S., 539, it was held that this operated as a discrimination against the banks and imposed taxation on banking capital at a greater rate than on other moneyed capital. It is easy to perceive that the laws in that State made a very substantial discrimination against capital invested in banking, and the court held that the section under consideration includes the valuation of the shares as well as the rate of percentage charged thereon.

In Supervisors *vs.* Stanley, 105 U. S., 305, the court again had this same statute under consideration, and it was held that so far as the laws of New York discriminated against the holders of shares in national banks by refusing to them a deduction from the value of

their stock equal to the amount of their indebtedness, while such deduction was allowed to the individual owners of all kinds of other personal property, it was in conflict with the act of Congress and void to that extent, but that the statute was valid except so far as it refused to the owners of national bank stock the right to deduct their debts from its valuation.

The case of Evansville Bank *vs.* Britton, 105 U. S., 323, goes
33 one step further. Mr. Justice Miller in delivering the opinion, among other things, says: "A distinction is attempted to be drawn between the Indiana statute and the New York statute, because the former permitted the deduction of the tax-payer's indebtedness to be made from the valuation of his personal property, while in Indiana he can only deduct it from his credits, and undoubtedly there is such a difference in the laws of the two States, but if one of them is more directly in conflict with the act of Congress than the other it is the Indiana statute. In its schedule the subject of taxation from which the tax-payer may deduct his *bona fide* indebtedness is placed under two heads, as follows:

1. Credits or money at interest, either within or without the State, at par value.

2. All other demands against persons or bodies corporate, either within or without this State.

Total amount of all credits.

The act of Congress does not make the tax on personal property the measure of the tax on bank shares in the State, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily moneyed capital, but the rights, credits, demands, and money at interest mentioned in the Indiana statute from which *bona fide* debts may be deducted all mean moneyed capital invested in that way."

In Boyer *v.* Boyer, 113 U. S., 689, in a case arising under the laws of
Pennsylvania it appeared that "the laws of Pennsylvania ex-
34 empted from local taxation for county purposes railroad securities, shares of stock held by stockholders in corporations which were liable to pay certain taxes to the State, mortgages, judgments, recognizances, moneys due on contracts for sale of real estate, and loans by corporations which were taxable for State purposes when the State tax should be paid.

The pleadings in this case admitted in detail large amounts of exempted property under these heads in the State. Held that under these circumstances this constituted a discrimination in favor of other moneyed capital against capital invested in shares in national banks, which was inconsistent with the provision in section 5219, Revised Statutes; that the taxation by State authority of national bank shares shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such

State. In the opinion in that case it is again said that a partial exemption would not take away the power to tax bank shares, but much stress is laid on the fact that the exemption covered a very large part of the moneyed capital of the State.

In the case of Merchantile Bank *v.* New York, 121, U. S., it was held that the facts that under the laws of the State of New York trust company-s and savings banks were taxed in a different manner from national banks, and that deposits in savings banks were exempted from State taxation, and that bonds of the city of New York were also exempt, were not sufficient to show a substantial discrimination against national banks. The court in this case reviewed the previous decisions at some length and adhered to the general proposition enunciated in the former cases, that in order to invalidate the tax there must be a substantial discrimination against national banking capital.

35 The case of Whitbeck *vs.* Merchantile Bank, 127 U. S., 193, arose under the laws of the State of Ohio. It appeared that the statute of that State allowed an owner of moneyed capital, other than shares in a national bank, to have a reduction equal to his *bona fide* indebtedness made from the amount of the assessments of such moneyed capital, but made no such allowance on the value of shares in a national bank. It was held that owners of bank stock were entitled to the same deduction of the amount of their indebtedness as in the case of other moneyed capital.

It appears to us that the principle declared and maintained in all of the cases decided by the U. S. Supreme Court is that there must not be a substantial discrimination against capital invested in national banks; that the question of minor exemptions is a matter of State policy, with which that court will not interfere, and that when only some minor and inconsiderable portions of capital are relieved from the burden of taxation the validity of taxes levied on national banks will not be thereby affected.

The supreme court of the State of Indiana, in the very elaborate and well-considered opinion in the case of Wasson, treasurer, *vs.* First National Bank of Indianapolis, reviewed the decisions on the question and take judicial notice of the fact that the other forms of moneyed capital from which debts may be deducted constitute a large and material portion of the moneyed capital of the State, and conclude that national banks are therefore entitled to a similar reduction. Following the decisions of the supreme court with reference to the same statute, it was said that in that State indebtedness could be deducted from the amount of notes, judgments, and credits of every description due from any person, company, or corporation, whether drawing interest or not. In this State the deduction

36 cannot be made from the amount of judgments or any money secured by lien on real estate. Money on deposit subject to demand is also taxable as well as all corporate stocks.

We have also examined the cases of McAden *v.* Commissioners 97 N. C., 355; First Nat'l Bank *v.* City Council (Iowa), 52 N. W., 334; Miller *v.* Heilbron, 58 Cal., 133; Ruggles *v.* Fond du Lac (Wis.), 10 N. W., 565; Peavey *v.* Greenfield (N. H.), 9 Atlantic, 722.

None of these cases go to the length it would be necessary to reach in order to affirm the judgment of the district court. That of Miller *v.* Heilbron seems to reach the furthest limit of any. The political code of California provided that "in assessing a solvent debt not secured by mortgage or trust deed a reduction therefrom shall be made of debts due a *bona fide* resident of the State." It will be seen that in California the only exception is debt secured by mortgage or trust deed. On the other hand, the case of Bressler *vs.* County of Wayne, 32 Neb., 834, decided and reported first in the 25 Neb., 468, and finally disposed of on a rehearing, holds that the statute of that State which allows all persons, companies, or corporations, except banks, to deduct the amount of their debts from the gross amount of their credits is valid, and that under their statute persons owning stock in national banks cannot deduct their indebtedness from the value of their shares. That case takes more extreme ground than we are required to take in this in order to deny the stockholders the right claimed.

The credits referred to in our statute are but one of many kinds of moneyed capital, if, indeed, they can be regarded as capital at all. It would seem to have been the view of the legislature that only those unsecured credits which were not in general investments for profit, but would in the ordinary course of honest dealing be applied as soon as received to the extinguishment of current debts and obligations should be subject to the deduction, and
37 that in fact such credits represented no capital whatever where there was a corresponding debt, to the payment of which they of right should be devoted. We cannot in this case take judicial notice of the fact that such credits constitute a large or even material part of the moneyed capital of the State. On the contrary, we do take judicial notice of the fact that debts secured by liens on real estate, money invested in corporate stocks of all kinds and descriptions, including railroad, banking, insurance, loan and trust companies, and all the multifarious forms of moneyed securities, moneys on deposit subject to call, and other forms of invested capital constitute the great bulk of the moneyed capital in this State. The case of the Bank of Leoti *vs.* Fisher, 45 Kas., 726, is cited on the part of the bank as decisive of this case. That case, however, merely decides that the assessment of the stock *in solido* against the bank itself is invalid, and that the individual stockholders are entitled to the same deductions from the assessment upon their shares as other tax-payers owning moneyed capital are allowed.

We are entirely satisfied with the opinion in that case, but it does not reach the question here presented. Upon this branch of the inquiry we conclude that section 5219 of the Revised Statutes of the United States is not violated, and that neither owners of stock in national banks nor any other banks or corporations of any kind have the right to deduct their indebtedness from the valuation of their shares of stock.

Two minor questions are presented in the case. It appears that
40 shares of the stock were held by the bank, and that these were

assessed to the bank. In the absence of any showing that in ascertaining the value of a share of stock in the bank the full thousand shares were considered as outstanding, we think this assessment wrong. The owners of the remaining $96,000 of capital
38 stock would be entitled to all the property of the company, and the forty shares held by the bank would simply amount to just as much as a liability as they would as an asset.

The cases of the Pomeroy Coal Company *v.* Emlin, 44 Kas., 117, and Gibbons *v.* Adamson, 44 Kas., 203, are cited in support of the proposition that the assessor had no right to change the assessment after it was made and returned, and that the board of equalization had no power to add to the amount of taxable property returned by the assessor. In reply to that we may say that this is an action of injunction in which the bank appears as plaintiff, and it can only be maintained for the purpose of restraining an illegal tax, no matter what the irregularity in the mode of assessment may have been.

We are not prepared to say that the board of equalization had no power to strike out the deduction of debts claimed by the stockholders, but to which we have held they are not entitled.

With reference to the "double assessment," there are no averments in the petition from which it can be inferred that this property had not escaped taxation for the year 1892 while in the hands of the same parties. If it had so escaped, the double assessment was right, and the collection of the tax, even though about to be irregularly placed on the tax-roll, will not be enjoined.

The judgment is reversed and the cause remanded for further proceedings in accordance with the views above expressed.

All the justices concurring.

A true copy.

Attest:

——— ———,
Clerk Supreme Court.

39 And afterwards, on the 2nd day of June, 1894, there was filed in the office of the clerk of the supreme court a motion for a rehearing of this cause; which said motion is in words and figures as follows, to wit:

40 In the Supreme Court of the State of Kansas.

THE FIRST NATIONAL BANK OF GARNETT, KANSAS, Pl'ff in Error,
vs.
R. S. AYRES *et al.*, Def'ts in Error.

Motion for Rehearing.

Now comes the plaintiff in error and moves the court to grant it a rehearing of this cause for the following reasons:

1. The court erred in finding that the word "credit" as used and defined in the chapter of general statutes on the subject of taxation does not include shares of stock in banking corporations.

2. The court erred in holding that unsecured credits which are

not invested for profit are the only credits taken into consideration in listing property for taxation.

3. The court should have taken judicial notice of the fact that the words, "The term credit when used in this act shall mean and include every demand for money, labor or other valuable thing, whether due or to become due, but not secured by lien on real estate," include a large and material part of the moneyed capital of the State.

4. The court misapprehended the facts within its knowledge when it declared that it could not say that any material or substantial part of the moneyed capital of this State in the hands of individuals was subject to deduction for debts owing by such individuals when listing property for taxation.

5. The court erred in holding that the statute of this State which permits debts owing in good faith by any person, company, or corporation to be deducted from the gross amount of credits belonging to such company, person, or corporation in listing property for taxation, when the owners of shares of stock in national banks are not allowed to deduct their indebtedness from the value of such shares is not in conflict with section 5219 of the General Statute of the United States.

6. The court erred in holding that stockholders in a national bank did not have the right to deduct their *bona fide* debts from the value of their bank stock in listing and assessing such bank stock for taxation.

J. W. ROSE,
Attorney for Plaintiff in Error.

8274. 1st National Bank of Garnett *vs.* R. H. Ayres. Motion for rehearing. Filed June 2, 1894. C. J. Brown, clerk supreme court.

41 And afterwards, on the 8th day of June, 1894, the same being one of the regular judicial days of the January term, 1894, of the supreme court of the State of Kansas, before said court, in session at the supreme court room, in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable William A. Johnston and Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court—the following proceeding, among others, was had and entered of record, as follows, to wit:

FIRST NATIONAL BANK, Pl'ff in Error,
vs.
R. S. AYRES, Def't in Error.
} No. 8274.

Now comes on to be heard the motion of plaintiff in error for a rehearing of this cause; and thereupon, after due consideration by the court, it is ordered that said motion be overruled.

42 And afterwards, on the 27th day of June, 1894, there was filed in the office of the clerk of the supreme court of the State of Kansas a writ of error to the Supreme Court of the United

States, the original of which is hereunto attached and is in words and figures as follows, to wit:

43 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Kansas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court of the State of Kansas, before you, being the highest court of law or equity of said State in which a decision could be had in said suit, between The First National Bank of Garnett, Kansas, plaintiff in error, and R. S. Ayres, sheriff of Anderson county, Kansas; J. M. Hargrave, treasurer of Anderson county, Kansas, and Board of County Commissioners of Anderson county, Kansas, defendant- in error, wherein it was claimed that a certain statute of the State of Kansas was invalid as in contravention of section 5219 of the Revised Statutes of the United States, and the decision was against the claim set up by the plaintiff in error under the said section 5219 of the Revised Statute of the United States, a manifest error hath been, to the great damage of the said The First National Bank of Garnett, Kansas, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done
44 therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the Circuit Court of the United States, District of Kansas. 1862.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26 day of June, in the year of our Lord one thousand eight hundred and ninety-four.

G. F. SHARITT,
Clerk of the Circuit Court of the United States for the District of Kansas.

Allowed by—

ALBERT H. HORTON,
Chief Justice of the Supreme Court of the State of Kansas.

8274. The First National Bank of Garnett *vs.* R. S. Ayers *et al.* Writ of error.

45 [Endorsed:] No. 8274. The First National Bank of Garnett *vs.* R. S. Ayres *et al.* Writ of error. Filed Jun- 27, 1894. C. J. Brown, clerk sup. court. J. W. Rose, attorney-at-law, Hutchinson, Kansas.

46 And afterwards, on the 9th day of July, 1894, there was filed in the office of the clerk of the supreme court of the State of Kansas an appeal bond, which, with the approval of the chief justice of this court endorsed thereon, is in words and figures as follows, to wit:

47 In the Supreme Court of the State of Kansas.

THE FIRST NATIONAL BANK OF GARNETT,
Plaintiff in Error,
vs.
R. S. AYRES *et al.*, Defendants in Error.
} Bond.

Know all men by these presents that, we, the First National Bank of Garnett, Kansas, as principal, and John R. Foster as surety, are hereby held and firmly bound unto the defendants in error R. S. Ayres *et al.* in the sum of fifteen hundred ($1,500.00) dollars, for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors, administrators, and assigns.

The conditions of the above obligation are as follows: Whereas the supreme court of the State of Kansas, on the 5th day of May, 1894, rendered a judgment in the above-entitled action against the plaintiff in error, affirming the judgment of the district court of Anderson county; and whereas the said plaintiff in error desires to have the said case taken to the Supreme Court of the United States as involving a Federal question:

Now, therefore, if the said plaintiff in error shall duly prosecute this said appeal to said Supreme Court of the United States and shall obey and comply with the judgment rendered by the said Supreme Court of the United States and shall do and perform all the things by said court ordered or required to be performed, then this bond shall be void; else to remain of full force and effect.

48 In witness whereof we have hereunto set our hands and seal- this 27th day of June, 1894.

THE FIRST NATIONAL BANK OF GARNETT,
By JOHN R. FASLER, *President.*
JOHN R. FASLER.

Approved by me this 11th day of July, A. D. 1894.

ALBERT H. HORTON,
Chief Justice.

8274. First Nat. Bank of Garnett *vs.* R. S. Ayres *et al.* Bond. Filed July 9, 1894. C. J. Brown, clerk supreme court.

49 And also, on the 9th day of July, 1894, there was filed in the office of the clerk of the supreme court a citation in the above-entitled cause with the acknowledgment of due service thereof endorsed thereon, the original of which is hereunto attached and is in words and figures as follows, to wit:

50 THE UNITED STATES OF AMERICA, *ss:*

To R. S. Ayers, sheriff of Anderson county, Kansas; J. M. Hargrave, treasurer of Anderson county, Kansas, and Board of County Commissioners of Anderson county, Kansas, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein The First National Bank of Garnett, Kansas, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected and why speedy justice be done in that behalf.

Witness the Honorable Albert H. Horton, chief justice of the supreme court of the State of Kansas, this 27th day of June, A. D. 1894.

ALBERT H. HORTON,
Chief Justice of the Supreme Court of the State of Kansas.

Service of the above and foregoing citation is hereby acknowledged this 29th day of June, A. D. 1894, by the delivery of a duplicate of the same to me.

C. T. RICHARDSON,
Attorney for Defendants in Error.

8274. The First National Bank of Garnett, Kansas, *vs.* R. S. Ayers, sheriff of Anderson county, Kansas, *et al.* Citation.

51 [Endorsed:] No. 8274. The First National Bank of Garnett *vs.* R. S. Ayers *et al.* Citation. Filed Jul- 9, 1894. C. J. Brown, clerk sup. court. J. W. Rose, attorney-at-law, Hutchinson, Kansas.

52 In the Supreme Court of the State of Kansas.

I, C. J. Brown, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, correct, and complete transcript of all pleadings and papers filed and of all proceedings had in the supreme court of the State of Kansas in the above-entitled cause, as the same remain on file and of record in my office.

Seal Supreme Court, State of Kansas.

Witness my hand and the seal of the supreme court of the State of Kansas, affixed hereto, at my office, in the city of Topeka, this — day of July, 1894.

C. J. BROWN,
Clerk of Supreme Court of the State of Kansas.

Endorsed on cover: Case No. 15,678. Kansas supreme court. Term No., 794. The First National Bank of Garnett, Kansas, plaintiff in error, *vs.* R. H. Ayers, sheriff of Anderson county, Kansas; J. M. Hargrave, treasurer of Anderson county, Kansas, & The Board of County Commissioners of Anderson County, Kansas. Filed September 10th, 1894.

DEC 26 1895
JAMES H. McKENNEY,
CLERK

—IN THE—

SUPREME COURT

—OF THE—

UNITED STATES,

OCTOBER TERM 1895.

THE FIRST NATIONAL BANK OF GARNETT, KANSAS,
Plaintiff in Error,

vs.

R. S. AYRES, SHERIFF OF ANDERSON COUNTY, KANSAS,

J. M. HARGRAVE, TREASURER OF ANDERSON COUNTY, KANSAS, AND

THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY, KANSAS,
Defendants in Error,

TERM NO. 446.

ERROR FROM THE SUPREME COURT OF KANSAS.

BRIEF OF DEFENDANTS IN ERROR.

A. BERGEN AND
C. T. RICHARDSON,
Solicitors for Defendants in Error.

JOURNAL JOB DEPARTMENT GARNETT, KANSAS.

—— IN THE ——

SUPREME COURT

—— OF THE ——

UNITED STATES.

OCTOBER TERM 1895.

THE FIRST NATIONAL BANK OF GARNETT, KANSAS,
Plaintiff in Error,

vs.

R. S. AYRES, SHERIFF OF ANDERSON COUNTY, KANSAS.

J. M. HARGRAVE, TREASURER OF ANDERSON COUNTY, KANSAS, AND

THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY, KANSAS,
Defendants in Error.

TERM NO. 446.

BRIEF OF DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

Defendants herein accept the Statement of this Case contained in plaintiff's brief as substantially

correct, except so far as it may be inconsistent with the matters which are made to appear in this brief, but defendants deny that the concluding paragraph has any proper application to this controversey, either in fact, or as appears from the Record.

The paragraph to which we refer appears on page five of plaintiff's brief and is as follows:

"Said Supreme Court further held that the section of the Kansas statutes permitting the deduction of debts from credits is not in conflict with section 5219 of the general statutes of the United States, and that bank stock by reason of the allowance of the deduction of debts from credits is not assessed at any greater rate than other moneyed capital in the hands of individual citizens and is not in conflict with said section 5219."

SPECIFICATION OF ERRORS.

Plaintiff herein attempts to specify four grounds of error which are set out on pages five, six and seven of its brief, but that is only a matter of form. The third specification is only a repetition of the first, while the fourth is like unto the second. The substance of the four specifications of error is:

FIRST:—That the Supreme Court of Kansas erred in deciding that:

"The word credit as defined in paragraph 6847 of the general statutes of 1889 and used in the chapter providing for the assessment and collection of taxes does not include stock in a national bank and the owners of such shares have no right to deduct from their assessed value the amount of their debts."

The above is the first paragraph of syllabus by the court in the case of Charles W. Dutton, County Clerk of Cloud County, Kansas, vs. The Citizens National Bank of Concordia, Kansas. The opinion of the Supreme Court of Kansas in the above entitled case is given in full in the Record and this case is decided by reference to that.

SECOND:—That the Supreme Court of Kansas erred in deciding that:

"The statute of this state which permits debts owing in good faith by any person, company or corporation to be deducted from the gross amount of credits belonging to such person, company or corporation in listing their property for taxation, when the owners of shares of stock in a national bank are not allowed to deduct their indebtedness

from the value of such shares, is not in conflict with section 5219 of the general statutes of the United States, does not operate to tax such shares at a greater rate than other moneyed capital in the hands of individual citizens and is valid, the law providing that all corporate stocks, all moneys secured by judgment or lien on real estate, all moneys on deposit in any bank subject to withdrawal on demand, and substantially all moneyed capital of every description invested for profit shall be subject to taxation without reduction of indebtedness."

The above is the second paragraph of the syllabus in the same case, but we think it refers exclusively to the questions raised in that case, for we hold that this question is not at issue under the petition and agreed facts in the case of First National Bank vs. Ayres.

THE PLAINTIFF in this case claims that both of the questions indicated in the above syllabus were properly before the Supreme Court of Kansas for its decision, that said court decided each of them, and that in deciding each of them it committed error which can be reviewed by this court.

DEFENDANTS CLAIM:—

FIRST:—That as to plaintiff's first specification of error as stated above no Federal question is presented for the consideration of this court and this court will not review a decision of the Supreme Court of Kansas as to what does or does not fall within the statutory definition of the term credit in that state.

SECOND:—That as to the matter of discrimination against the owners of stock in national banks as compared with the owners of other forms of moneyed capital in Kansas, no such question is placed at issue by the pleadings and agreed statement of facts herein and the same do not state a cause of action.

In case this court holds the further question of discriminations is properly before it.

THIRD:—That no discrimination is effected or permitted under the laws of Kansas and decision herein complained of, whereby stock in national bank is taxed at any other or higher rate than other moneyed capital in the hands of individual citizens.

ARGUMENT.

No Federal Question is Presented by the Petition, Agreed Statement of Facts, and Decision of the Supreme Court of Kansas that Stock in a National Bank Does Not Fall Within the Statutory Definition of the Term Credit in that State.

No Federal question is presented by the petition and agreed statetment of facts in this case for the consideration of this court, as they relate only to the construction of a statute of Kansas by its Supreme Court.

The plaintiff herein filed its petition in the District Court of Anderson County, Kansas, on December 23, 1890. Said petition is found in the Record on pages three to nine. It shows on its face that it was drawn with the sole purpose of making a case under sections 6847 and 6851 of the laws of Kansas. The two sections taken together define the term "credit" as used in the general statutes of 1889 and provide that certain debts may be deducted from certain credits leaving only the net balance of credits subject to taxation.

We give the two sections mentioned in full.

(6847) DEFINITIONS OF TERMS. § 2. That the terms "real property," "real estate" and "land,"

when used in this act, except as otherwise specifically provided, shall include not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto. The term "personal property" shall include every tangible thing which is the subject of ownership, not forming part or parcel of real property; also, all tax-sale certificates, judgments, notes, bonds and mortgages, and all evidences of debt secured by lien on real estate; also, the capital stock, undivided profits, and all other assets of every company, incorporated or unincorporated, and every share or interest in such stock, profit or assets, by whatever name the same may be designated: PROVIDED, The same is not included in other personal property subject to taxation or listed as the property of individuals; and also every share or interest in any vessel or boat used in navigating any of the waters within or bordering on this state, whether such vessel or boat shall be within the jurisdiction of the state or elsewhere; and also all "property" owned, leased, used, occupied or employed by any railway or telegraph company, or corporation within this state, situate on the right of way of any railway;

that the term "property," when used alone in this act, shall mean and include every kind of property subject to ownership. The term "money" or "moneys" shall mean and include gold and silver coin, United States treasury notes and bank notes, whether in possession or on deposit, subject to be withdrawn in money on demand; and the said term "money" shall also mean and include all "time deposits" made for less period than one year by any bank, person, company or corporation, with any bank, person, company or corporation. The term "time deposits," when used in this act, shall mean and include the specified time for which the deposit was made. The term "credit," when used in this act, shall mean and include every demand for money, labor or other valuable thing whether due or to become due, but not secured by lien on real estate. The words "personal property," when used in this act in their general sense, shall include all taxable property other than real property. The words "town" or "village," when used in this act, shall include every place laid out in lots or blocks other than incorporated cities. The word "cities" shall include only such places as are incorporated cities. The word "he," "his" or

"him," when so used as to refer to a female, shall be held to mean "she," "her" or "hers," and when so used as to refer to more than one person, "they," "their" or "them," as the sense may require. [Laws 1876, ch. 34, § 2, March 11.]

(6851) PROPERTY OF MINOR, ETC.; CLASSIFICATION, DEBTS, ETC. § 6. The property of every ward shall be listed by his guardian; of every minor by his father, if living and of sound mind; but if his father be not living, or be of unsound mind, by his mother; and if neither father or mother is living, by the person having such property in charge. Any property held in trust for the benefit of another shall be listed by the trustee. The property of the estate of every deceased person shall be listed by the executor or administrator. The property of persons, companies or corporations, whose assets are in the hands of receivers, shall be listed by such receivers; and the property of every other corporation subject to taxation under this act shall be listed by some person designated by said corporation; and the property of any company or firm shall be listed by an agent or partner thereof. Merchants' and manufacturers' stock, moneys and credits shall be listed under two separate heads—

merchants' and manufacturers' stock forming one item, and moneys and credits forming another item in the statement required to be delivered to the assessor. Debts owing in good faith by any person, company or corporation, may be deducted from the gross amount of credits belonging to such person, company or corporation: PROVIDED, Such debts are not owing to any person, company or corporation as depositors in any bank or banking association, or with any person or firm engaged in the business of banking in this state or elsewhere; and the person, company or corporation making out the statement of personal property to be given to the assessor, claiming deductions herein provided for, shall set forth both the amount and nature of the credits, and the amount and nature of his debts sought to be deducted; but no person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation given to any mutual insurance company, or deferred payment, or loan for a policy of life insurance, nor on account of any unpaid subscription to any religious, literary, scientific or benevolent institution or society: PROVIDED, That in deducting debts from credits no debt shall be deducted where said debt

was created by a loan on government bonds or other taxable securities. [Laws 1876, ch. 34, § 6, March 11.]

The contention of plaintiff, as set out in the petition, is that national bank stock comes within the definition of the term credit as given in 6847, and that, therefore, plaintiff's stockholders had a right to deduct from it such of debts as fell within the rule and not within the exceptions in 6851.

The claims of the plaintiff and the admissions of the defendants are fully and definitely stated in an agreed statement of facts, which appears on pages 9 to 15 of the Record. The two concluding paragraphs of the statement of facts give the substance of the agreement and are as follows:

"It is further agreed that the only question submitted in this case is: 'Is national bank stock a credit from which debts may be deducted?'

"It is further agreed that the above and foregoing stipulation contains all the facts in the case."

The case was decided by the Judge of the District Court on December 23, 1891, and the decision is found on page 13 of the Record. The Court says:

"Thereupon on said day the Court, after due

consideration, finds for the defendants and each of them, upon the facts so submitted. Said statement of facts contains all the evidence in the case."

Plaintiff's motion for a new trial, on page 14 of the Record, contains no suggestion that it is the desire of plaintiff to litigate any other question than that concerning the standing of bank stock as to being or not being a credit under the laws of Kansas.

The case was duly appealed to the Supreme Court of Kansas and came on for hearing May 5, 1894, and the Court found for the defendants. No extended opinion was filed in the case as the matter at issue was the same as in the case of Charles W. Dutton, County Clerk of Cloud county, Kansas, vs. The Citizens National Bank, of Concordia, so far as the claim of the latter bank to have its stock declared a credit was concerned.

This Court considers the construction of a similar statute in New York by the Court of Appeals in Supervisors vs. Stanley, (105 U. S. 305) and says:

"Accepting, therefore, AS WE MUST, the act of 1866, as construed by the Court of Appeals of New York, as not authorizing any deduction for

debts by a shareholder of a national bank, is it for that reason absolutely void?"

If this Court uniformly accepts as final the decision of the highest court of a state in construing its own statutes, how is it possible to say that such construction will be considered as a Federal question and entitled to be reviewed on appeal by this Court.

The Question as to Whether the Statute of Kansas, Which Permits the Deduction of Certain Debts From Certain Credits, While it Denies the Deduction of Debts From Stock in National Banks, is a Discrimination Against the Owners of Stock in National Banks as Compared With Other Moneyed Capital in the Hands of Individual Citizens, is Not Placed Before This Court by the Record in This Case.

An examination of the petition and agreed statement of facts, together with the petition in error to the Supreme Court of Kansas, will show that the same are entirely insufficient to raise any question as to discrimination against the owners of stock in national banks as compared with other forms of moneyed capital in the state.

There is no allegation that such is the case. There is no allegation that under the laws of Kansas any considerable portion, or indeed any of the moneyed capital of the state, is included within the restricted portion of the credits of the state from which creditors may deduct a limited and restricted portion of their debts.

The national banking law does not establish any absolute limit to the taxing power of the state, but a comparative limit, when it grants authority to the state governments to tax the shares in national banks. The tax must not exceed the tax on other moneyed capital in the hands of individual citizens. Before the owners of stock in national banks can be heard to complain that they are taxed in violation of the Federal statute, because they are not permitted to deduct their debts from their bank stock, they must allege that there is moneyed capital in the state from which such deductions are permitted, and moreover, that such moneyed capital is a considerable and material portion of the moneyed capital of the state. The discrimination complained of must be alleged to be real and material. Then such an allegation must be either admitted or proved to be true. In this case this

material and essential fact is neither alleged, admitted, nor proved. The Supreme Court of Indiana considers this point in Wasson vs. First National Bank, 107 Ind., 206, and says:

"Unless the Court may take judicial notice of the fact that the moneyed capital from which the taxpayer may deduct his debts as here decided, is a material portion of the whole moneyed capital of the state, the complaint is fatally defective, because it contains no averment as to that fact."

The only way that the cause of action could be preserved to plaintiff was by the Court taking judicial notice that a deduction of debts is permitted from a material portion of the moneyed capital of the state. There is nothing in the Record that shows that the District Court of Anderson county took any notice of this matter, but if it did it must have been held that no material portion of the moneyed capital of the state escapes taxation by reason of the deduction of debts from credits. No other holding would be in conformity to the opinion rendered. And on page 26 of the Record the Supreme Court of Kansas takes judicial notice of the contrary, thus leaving plaintiff without any cause of action.

In Dutton vs. Citizens Bank, the Supreme Court of Kansas says:

"The credits referred to in our statute are but one of many kinds of moneyed capital, if, indeed, they can be regarded as capital at all. It would seem to have been the view of the legislature that only those unsecured credits which were not in general investments for profit, but would in the ordinary course of honest dealing be applied as soon as received to the extinguishment of current debts and obligations should be subject to the deduction, and that in fact such credits represented no capital whatever where there was a corresponding debt, to the payment of which they of right should be devoted. We cannot in this case take judicial notice of the fact that such credits constitute a large or even material part of the moneyed capital of the state. On the contrary, we do take judicial notice of the fact that debts secured by liens on real estate, money invested in corporate stocks of all kinds and descriptions, including railroad, banking, insurance, loan and trust companies, and all the multifarious forms of moneyed securities, moneys on deposit subject to call, and other forms of invested capital constitute the great bulk of the

moneyed capital in this state."

In this judicial notice as to the amount or proportion of moneyed capital which is permitted to escape taxation by reason of the limited deduction of debts from a certain class of credits, the Chief Justice and the two Associate Justices of the Supreme Court of Kansas concur. Each is a man of mature years and large experience in life. The Chief Justice has been a judge of the Supreme Court of Kansas for eighteen years. One Associate Justice has served eleven years, and the other five years. Each had formerly been judge of one of the district courts of the state, where a large volume of business was regularly disposed of. Each was a lawyer of eminence and distinction for many years preceding his elevation to the district judgeship. In taking judicial notice of the amount of credits from which debts are allowed to be deducted in Kansas, each brings to bear upon the proposition that common knowledge which he, in common with other citizens, each in proportion to his opportunities and abilities, has been able to gain from the common experiences of life. Deliberating together, each arrives at the same determination of the question, and under the full responsi-

bility of their official oath and position, they promulgate it as the decision of the Court. They say:

"We cannot in this case take judicial notice of the fact that such credits constitute a large or even material part of the moneyed capital of the state. On the contrary, we do take judicial notice of the fact that debts secured by liens on real estate, money invested in corporate stocks of all kinds and descriptions, including railroad, banking, insurance, loan and trust companies, and all the multifarious forms of moneyed securities, money on deposit subject to call, and other forms of invested capital constitute the great bulk of moneyed capital in this state."

It seems to us that this judicial determination of this point is substantially a decision of this case on its merits, from which there can be no successful appeal. It is true that it is within the power of this Court to take judicial notice contrary to that of the Supreme Court of Kansas, and plaintiff's claims can be sustained only by such action of this Court. It is rare that just such a question as this presents itself, but it seems clear to us that unless the judicial notice of this Court is squarely opposed

to that of the Supreme Court of Kansas, plaintiff herein will have shown no cause of action which could have availed in any court. Therefore, no issues were joined in the courts below, and no Federal, nor indeed any question at all, is presented for the consideration of this Court.

The Statute of Kansas, Which Permits a Limited Portion of the Debts Owing in Good Faith by Any Person, Company or Corporation to be Deducted From a Limited Portion of the Credits Belonging to Such Person, Company or Corporation, in Listing Their Property for Taxation, When the Owners of Shares of Stock in a National Bank Are Not Allowed to Deduct Their Indebtedness From the Value of Such Shares, is Not in Conflict With Section 5219 of the General Statutes of the United States, Does Not Operate to Tax Such Shares at a Greater Rate Than Other Moneyed Capital in the Hands of Individual Citizens, and is Valid.

The credits from which debts may be deducted under the laws of Kansas are only a small part of the credits owned in the state, and the entire credits only a small portion of the moneyed capital

owned in the state. And only certain kinds of debts can be deducted from the class of credits from which deductions are permitted.

Sections 6847 and 6851 of the Statutes of Kansas, 1889, taken in connection with the opinion in the case of Dutton vs. National Bank of Concordia, on page 19 of the Record, divide moneyed capital invested in Kansas into two very unequal classes, one very large and important; the other quite small and inconsiderable.

The First Class, consists of:

Money, either in possession or on deposit subject to check.

Investments secured by lien on real estate.

Shares of stock in all banks organized under the laws of the state or of the United States.

Judgments of record in the courts of this and other states.

Investments for profit by private bankers, persons, companies or corporations, where the business is to employ money as moneyed capital and make a profit by loaning it.

Upon this last point we think our Court substantially adopts and acts upon the principle as expressed in the case of Bressler vs. Wayne county,

32 Nebraska, 834, from which we quote the following:

"The word credit, as used in the section, was not intended to include notes, securities, accounts due, or other credits which are the assets of any bank, banker, broker or stock jobber, but was intended to to cover debts due the taxpayer growing out of other ordinary business transactions."

The SECOND CLASS is credits as that term is interpreted in the case of Dutton vs. National Bank of Concordia, on page 26 of the Record, from which we quote the following:

"The credits referred to in our statute are but one of the many kinds of moneyed capital, if, indeed, they can be regarded as capital at all. It would seem to have been the view of the legislature that only those insecured credits which were not in general investments for profit, but would in the ordinary course of honest dealing, be applied as soon as received to the extinguishment of current debts and obligations, should be subject to the deduction, and that in fact such credits represented no capital whatever where there was a corresponding debt, to the payment of which they of right should be devoted."

From the very large and important classes of real and substantial moneyed capital included within the first class as given in the foregoing, no deductions are permitted on account of debts. The owners of moneyed capital invested in those classes are taxed without deduction for debts the same as are the owners of stock in national banks. Equal and exact justice is done to all.

Motives of public policy permit the deduction of certain debts from the item which makes up the second class, said by our Supreme Court to be:

"Credits, one of many kinds of moneyed capital, if, indeed, they can be regarded as capital at all."

But even from this form of moneyed capital, if such it be, not all forms of debt can be deducted.

For purposes of this comparison it is still further reduced. The statute provides that no deduction shall be made from any credit on account of:

1. Debts owing to any person, company or corporation as depositors in any bank or banking association, or with any person or firm engaged in the business of banking in this state or elsewhere.

2. Or on account of any bond, note or obligation given to any mutual insurance company, or

deferred payment, or loan for a policy of life insurance.

3. Or on account of any unpaid subscription to any religious, literary, scientific or benevolent institution or society.

4. Or on account of any debt created by a loan on government bonds or other non-taxable securities.

We feel certain that under the Statutes of Kansas, as interpreted and enforced by the Supreme Court, there neither is, nor is attempted to be, any injustice perpetrated upon the owners of shares of stock in national banks within the state. On the contrary, we are confident that the plaintiff bank herein is attempting by a technical and wholly unwarranted interpretation of Section 5219 of the Statutes of the United States, to secure for its shareholders, and for the shareholders of all similar corporations within the state, an unfair and unjust discrimination in their favor and against the owners of not only all other moneyed capital, but of all owners of all other property within the state.

A number of decisions of this and other courts are cited in the brief of plaintiff herein as tending to show that under the prohibitory clause of Section

5219 of the national banking act, the decision of the courts of Kansas ought to be reversed.

Three of them have arisen under the laws and decision of New York. They are:

Supervisors of the County of Albany vs. Stanley, 105 U. S., 305.

Hills vs. The National Albany Exchange Bank, 105 U. S., 319.

Mercantile National Bank vs. New York, 121 U. S., 138.

The value of those cases, as authority for this, it is very clear, depends upon the similarity of the statutes of New York and Kansas on the subject of exemptions. Counsel for plaintiff, in their brief, say:

"The statute in New York was somewhat different from ours, in this, that individuals were permitted to deduct their debts from the value of their personal property."

The admission does great credit to the learned counsels' powers of discrimination. It is as if they had said, "A man is not a horse"—and then gone on to prove that a man is a horse. Supervisors vs. Stanley says:

"It is only when we look to the other statute,

which permits the deduction of debts from the entire value of personal property, that we discern the discrimination against bank shares."

Of course the entire value of personal property in New York includes the entire value of moneyed capital in New York. The deduction of debts from the entire moneyed capital in New York is a very different affair from the deduction of debts from a very small portion of the credits in Kansas.

Hills vs. The National Albany Exchange Bank contains nothing additional so far as the issues in this case are concerned.

Nor does Mercantile Bank vs. New York, but the first paragraph of the syllabus contains a statement as to the purpose of congress in fixing limits to state taxation on investments in shares of national banks. It says:

"The main purpose of congress in fixing limits to state taxation on investments in shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business, and operations and investments of a like character."

It therefore appears that the prohibiting clause of the act was for the protection of shareholders in national banks, and that it was not intended to give them the advantages over shareholders in state banks, and the owners of other moneyed capital, which is contended for by plaintiff herein.

The same case also gives the true definition of moneyed capital, as follows:

"The term moneyed capital, as used in Rev. Stat. Sec. 5219, respecting state taxation of shares in national banks, embraces capital employed in national banks and capital employed by individuals when the object of their business is the making of profit, by the use of their moneyed capital as money—as in banking as that business is defined in the opinion of the Court."

Plaintiff cites an Ohio case, Whitbeck vs. The Mercantile National Bank of Cleveland, 127 U. S., 193. The syllabus is quoted as follows:

"The statutes of Ohio regulating assessment for taxation allow an owner of moneyed capital other than shares in national bank to have deduction equal to his bona fide indebtedness made from the amount of the assessment of the value of such moneyed capital, but they make no provision for a

similar deduction from the assessed value of shares in a national bank, and provide no means by which such a deduction may be obtained. It is held that the owners of such shares are entitled to have a deduction of their indebtedness made from its assessed value as in the case of other moneyed capital."

The above does not indicate conditions similar to those we have shown to exist in Kansas. The moneyed capital from which deductions for debts are permitted under the Ohio statute includes all the moneyed capital which a taxpayer may own. It includes the great mass of the moneyed capital of the state. The fairest and most critical analysis of the tax laws of Ohio only emphasizes the distinction which we make between the laws of Ohio and Kansas. The laws of each state authorize the deduction of bona fide debts from credits. But under the laws and decisions of Kansas the term credit indicates and includes no item of moneyed capital secured by a lien on real estate, which is a large portion of the moneyed capital of the state, while the portion indicated by the same term in Ohio includes investments secured by liens and mortgages and is a large and important part of the

moneyed capital of that state."

Section 2730 of the statutes of Ohio is, in part, as follows:

"The term credits shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or services due, or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, other than such as are held to be money as hereinbefore defined, when added together, (estimating every such claim or demand at its true value in money) over and above the sum of legal bona fide debts owing by such person."

The above case was heard on appeal from the United States Circuit Court from the Northern District of Ohio.

Mercantile National Bank vs. Shields, 59 Federal, 952, is another decision by the same court in which the case Whitbeck vs. The Mercantile National Bank of Cleveland originated, and the decision is substantially the same. Both decide that investments in national bank stock must not be taxed at a higher rate than other moneyed capital, but neither purports to confer a special exemption

and advantage over other forms of moneyed capital invested in the state, and that is all we contend for in this case. The case at bar as it exists under the peculiar local conditions of Kansas, is clearly and fairly within the principle laid down in the case mentioned. That portion of the opinion to which we refer is as follows:

"Under Revised Statutes 5219, forbidding taxation by a state of national bank stock at 'a greater rate than is assessed upon other moneyed capital,' means money employed in a business whose object is to make profit by investing in securities by way of loan, discount, or otherwise, which from time to time are reduced again to money and reinvested."

The Court will take notice, especially of the variance between the statutes of Ohio and Kansas in the fact that in the former state debts are allowed to be deducted from investments of moneyed capital secured by lien on real estate, while in the latter no deductions are permitted from moneyed capital invested in this way.

There can exist no doubt but more in amount and value of moneyed capital invested in Kansas is secured by mortgage, trust deed, judgment, or other form of lien on real estate, than in

all other forms of investments taken together.

The cases of Evansville National Bank vs. Britton, 105 U. S., 322, and Wasson vs. First National Bank, 107 Indiana, 206, are referred to by plaintiff.

The former arose under a statute of Indiana which permitted bona fide indebtedness to be deducted from credits or money at interest either within or without the state, all other demands against persons or bodies corporate either within or without the state, or total amount of all credits.

As construed by the courts of Indiana, it embraces a very wide range of forms and investments of moneyed capital, in fact, practically all the moneyed capital of the state. Deductions were allowed from money at interest without regard to whether it was secured by mortgage, trust deed, judgment, or other form of lien upon real estate. It necessarily embraced a very large and material part of the moneyed capital of that state. The conditions prevailing are very easily distinguished from those now existing in Kansas.

Subsequent to this decision the statutes of Indiana were revised and Wasson vs. First National Bank was under the revision. The method of as-

sessment was particularly set out, and no mistake can be made as to what moneyed capital it allows to be diminished on account of debts. It is practically all, except money in hand.

The law of Indiana, as it now exists, is very definite. Section 6336 directs the listing under the head of credits of all annuities, bonds, notes secured by mortgage, notes not secured by mortgage, accounts, demands, claims, deposits with banks, individuals or corporations, and all other accounts due from persons of corporations.

From the sum of all these the taxpayer may deduct his bona fide indebtedness.

This left so little in the way of moneyed capital from which debts could not be deducted that it was held to be a discrimination against shares in national banks unless the same deduction was also permitted to be made from them.

In fact deductions were permitted from all forms of moneyed capital except cash. Deductions were even permitted from money in bank subject to check. Under such circumstances it is not surprising that to refuse the same privilege to owners of shares in national banks was considered a substantial discrimination against them.

In the decision of this case the Supreme Court says:

"This all shows that notes, drafts, mortgages and judgments are all credits within the meaning of that section of the statute, and hence credits from which the designated bona fide debts may be deducted by the taxpayer. This, it seems to us, may be plain. The statute also provides the form of the schedule to be furnished by the assessor to the taxpayer. That schedule is full and specific and was intended to, and does, provide in detail the place and manner of listing for taxation all articles and items of personal property, including moneyed capital and credits of every description."

The statute further sets aside so much of the following items as are not included in the above, as a class from which deductions are not allowed: Money on hand or subject to order not already entered under the head of credits, all money loaned by me and not already entered under the title of credits, all interest owing me not already entered on this schedule, all judgments or allowances in my favor entered at any court of record and which I have not already entered on this schedule, all legacies, bequests, and other estates in expectancy,

all shares of stock in any corporation formed outside of this state, and also all shares of stock in any corporation formed in this state and conducting its business outside of this state.

The items last given above are found in a subsequent section, and the Court says that in case there is any conflict of statutes as to the credits from which debts may be deducted, Section 6336 must control. It is therefore apparent that the only material item of moneyed capital from which debts may be deducted in Indiana is money, actual cash in hand.

The Supreme Court of Indiana takes judicial notice of the fact that the other forms of moneyed capital from which debts may be deducted constitute a large and material portion of the moneyed capital of the state, and concludes, therefore, that national banks are entitled to a similar reduction. The Supreme Court of Kansas says that it cannot take judicial notice that such credits constitute a large or even material part of the moneyed capital of the state, but that on the contrary, other forms of investments from which no deductions are permitted constitute the great bulk of the moneyed capital in this state.

The case of Boyer vs. Boyer, 113 U. S., is cited by plaintiff. This was a case arising under the laws of Pennsylvania. The pleadings admitted the exemption from taxation of large amounts of moneyed capital, amounting to several hundred millions of dollars. The details are fully stated in the case and are too extended to re-state here. They were undoubtedly very large. The Court says:

"The exceptions in favor of the moneyed capital appear to be of such a substantial character as to take the present case out of the operation of the rule that it is not absolute equality which is contemplated by the act of congress, a rule which rests upon the ground that exact uniformity or equality of taxation cannot in the nature of things be expected or attained under any system."

We have no doubt that the case at bar falls fairly within the rule stated above.

A number of the decisions of state courts are mentioned in plaintiff's brief, but upon investigation they do not appear to add much weight to the argument, on account of the variance between the tax laws of these states and those of Kansas.

The case of Miller vs. Helbron, 58 California,

133, is one of them. We observe that the Political Code of California, Section 3628, provides that:

"In assessing solvent debts not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this state."

Deductions are permitted from every form of debts except those secured by mortgage or trust deed.

The case of McAdam vs. Commissioners, 97 North Carolina, 355, is decided under the following very liberal statute. Clause 5 of Section 12 of Chapter 175 of the Revenue Act of 1885 is as follows:

"The amount of solvent credits, including accrued interest uncollected, owing to the party, whether in or out of the state, whether owing by mortgage, bond, note, bill of exchange, certificate, check, open account due and payable, or whether owing by any state or government, county, city, town or township, individual, company or corporation, any certificate of deposit in any bank, whether in or out of the state, and the value of tobacco, cotton or other property in the hands of commission merchants or agents, in or out of the state, shall be

deemed solvent credits within the meaning of this act. If any credit shall not be regarded as entirely solvent, it shall be given in at its true current or market value. The party may deduct from the amount of solvent credits owing to him the amount of collectable debts owing by him as principal debtor."

The Wisconsin case, Ruggles vs. City of Fon du Lac, 10 N. W., 565, is decided within Section 1038, which permits deduction of debts from credits. In that state credits embrace all moneyed capital, and deduction of debts is permitted from all moneyed capital.

Comparing the laws of New York and their own state, the Supreme Court of Wisconsin says:

"The section referred to is similar to our own, 1038, above mentioned, except that the deduction of debts is to be made from the value of all personal property, including moneyed capital, whereas under our statute it is only to be made from credits, or what is the same thing, moneyed capital."

We also invite the attention to the principles enunciated in the following:

"The implied limitation upon state taxation from the express permission to tax shares in the

national banking associations is to be so construed as not to embarrass the imposition or collection of state taxes to the extent of the permission fairly and liberally interpreted."—National Bank vs. Commonwealth, 9 Wallace, 353.

"The proviso in the national banking act that the tax imposed by the state laws on shares in national banks 'shall not exceed the rate imposed upon the shares in any banks organized under the authority of the state where such association is located,' means only that the state as a condition to the exercise of the power to tax the shares in national banks, shall, as far as it has the capacity, tax in like manner the shares of banks of its own creation."—Lionberger vs. Rouse, 9 Wallace, 468.

In the case just cited the Court gives as the reason for the limitation—"The national banks were establisned to provide a national currency at a time when the state banks furnished the entire paper circulation of the country. In providing a system by which the states where national banks were located and did business could tax their shares, it was important, as their notes came in competition with state bank paper, there should be no unfavorable discrimination against them. It

was easy to see that an unfriendly state could legislate so as to drive them out of circulation, and this consideration induced congress to limit the state power of taxation in two particulars. In declaring that national bank shares should be taxed like other moneyed capital, and no burdens should be imposed upon them from which state banks were exempt, all was done that the necessity of the case required. There was nothing to fear from banks of discount and deposit merely, for in no event could they work any displacement of national bank circulation."

"It could not have been the intention of congress to exempt bank shares from taxation because some moneyed capital was exempt."—Hepburn vs. School Directors, 23 Wallace, 480.

"The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination of the states in the exercise of their taxing powers. * * * * *

"The act of congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested."—Adams vs.

Nashville, 95 U. S., 19.

"Credits are but one of the numerous kinds of moneyed capital. They represent, in the classification of taxable property, the ordinary debts due to a person, and as it has been common for so long a time in the states to measure their taxable value by their excess over like debts owing to the same person in the same right, that I cannot believe it was the intention of congress in its limitations on the power of taxing bank shares to require a deduction of debts from the value of shares when such a deduction was only allowed to other persons from this one kind of moneyed capital."—Opinion of Waite, C. J., and Justice Gray in Evansville, National Bank vs. Britton, 105 U. S. 322.

Very Respectfully Submitted,

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